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Paper No. 6

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**APR 04 2002**

**OFFICE OF PETITIONS**

In re Application of :  
Hitchings, Orlich, Schreiner, and :  
Bossong : DECISION REFUSING STATUS  
Application No. 09/828,616 : UNDER 37 CFR 1.47(a)  
Filed: 6 April, 2001 :  
Attorney Docket No. P/2167-229 :

This is in response to the petition filed under 37 CFR 1.47(a) on 14 January, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 6 April, 2001, without an executed oath or declaration. Accordingly, on 14 May, 2001, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. In response, on 14 January, 2002 (certificate of mailing 19 October, 2001), petitioners filed the present petition and petition fee, a request and fee for a four (4) month extension of the time to reply to the Notice, the required surcharge, and a declaration naming J. Robert Hitchings, Todd Orlich, Joe Schreiner and Edward Bossong as joint inventors and signed by

joint inventors Hitchings, Orlich, and Bosson on behalf of themselves and joint inventor Schreiner. Petitioners assert that Schreiner was sent a copy of the application for patent but has refused orally to sign the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (2). The declaration does not state the citizenship, mailing address, or residence of the non-signing inventor.<sup>1</sup> Additionally, the citizenship has not been provided for joint inventor Hitchings. A statement of the inventor's citizenship is a statutory requirement and cannot be waived.<sup>2</sup> Additionally, it is noted that the mailing address, residence, and citizenship for each inventor has been included only on the copy of the declaration signed by that respective inventor. The mailing address, and residence if the inventor lives at an address different from where the inventor customarily receives mail, and citizenship, for all inventors should be pre-printed on every copy of the declaration submitted to the Office. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67 and signed by all of the signing inventors on behalf of themselves and the non-signing inventor must be submitted with a renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Assistant Commissioner for Patents  
                    Box DAC  
                    Washington, D.C. 20231

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<sup>1</sup>MPEP 605.01.

<sup>2</sup>35 U.S.C. § 115, MPEP 605.01.


Application No. 09/828,616

3

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

  
Douglas I. Wood  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy